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METHOD AND SYSTEM FOR INITIATING A VEHICLE
DATA UPLOAD FUNCTION AT A PLURALITY OF MOBILE VEHICLES

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Group Art Unit: 2618

Examiner: Dominic E. Rego

Attorney Docket No. GP-304326-OST-ALS

REPLY BRIEF

Board of Patent Appeals and Interference
U.S. Patent and Trademark Office
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This Reply Brief is being filed to respond to certain comments and assertions contained in the Examiner's Answer mailed September 28, 2009. Appellant respectfully submits that the analysis and conclusions as to the different rejections are incorrect and therefore requests Board action to overturn the rejections.

Appellant contends that Lange does not disclose a satellite radio receiver, as that term is used by Appellant and as that term would be reasonably interpreted by one skilled in the art. Appellant's reasons for this are discussed at length in the Appeal Brief and the Examiner's Answer does not provide an adequate rebuttal. For instance, as Appellant noted previously, a "satellite radio receiver" involves an electronic device capable of receiving and outputting an audio signal containing music, news, information and/or other such content that is broadcast by one or more satellites over a radio system

broadcast channel used by the satellite(s).¹ And the Answer includes no analysis indicating how the GPS receiver taught by Lange should be given a meaning that departs from how one skilled in the art would understand a GPS receiver to function.

Instead, the Examiner's Answer includes newly presented evidence consisting of two new references (Lennen and Kreft) in what appears to be an attempt to support his interpretation that a GPS receiver receives radio frequency (RF) signals and thus is a satellite radio receiver. But these references do not support this conclusion. Neither defines nor even uses the term "satellite radio receiver." In fact, the cited portions of these newly-added references do not contradict Appellant's argument that one of skill in the art would not view a GPS receiver—taught by Lange or otherwise—as being a satellite radio receiver as claimed by Appellant. Lennen (U.S. Patent No. 6,266,007) discloses a combined GPS/GLONASS receiver capable of receiving GPS and GLONASS navigation signals.² Similarly, Kreft discloses a GPS receiver capable of receiving GPS/GLONASS signals.³ Both references appear to involve GPS units that operate much like Lange's. Neither provides any reason why one skilled in the art would consider them to be a "satellite radio receiver" as recited in Appellant's claims. Much more on point are US Patent No. 7,398,051 to Bates et al. and US Patent Application Publication No. 2005/0027449 to Marsh.⁴ The Bates patent is directed specifically to a "satellite radio receiver" and clearly demonstrates that it is a device that fits squarely within the definition proffered by Appellant. The Marsh publication discloses a system that includes, separately, a satellite radio receiver 16 and a GPS receiver 18, see paragraphs [0033] and [0034]. This demonstrates that they are understood to be two different things.

Additionally, the Examiner puts forward an unreasonable interpretation of Lange with which he argues that Lange discloses both "monitoring the radio broadcast channel using a satellite radio receiver for a call center initiated vehicle data upload" and

¹ Appellant's Appeal Brief, July 6, 2009, page 8, lines 25-27.

² Lennen, U.S. Patent No. 6,266,007, col. 7, lines 5-22.

³ Kreft, U.S. Patent No. 6,240,368, col. 2, lines 27-33.

⁴ The Bates and Marsh references are being cited by Appellant as rebuttal for the Examiner's newly-presented evidence (Lennen and Kreft).

“communicating the vehicle data upload command signal between the satellite radio receiver and a telematics unit on the vehicle.” In doing so, the Examiner takes the position that the GPS receiver and the telematics device disclosed by Lange are simultaneously integrated and separate—a mutually exclusive condition. For example, Lange teaches a telematics unit that communicates trigger signals with a service center via cellular communications.⁵ Using this teaching, it appears to be the Examiner’s position that the telematics device and GPS receiver taught by Lange are integrated, so that the GPS receiver (e.g. what the Examiner interprets as Appellant’s satellite radio receiver) receives the trigger signal (e.g. the vehicle data upload command signal). Because Lange teaches receiving a trigger signal at the telematics unit—even though that signal is not received via satellite—the Examiner argues that “**telematics unit 210 includes GPS receiver** to receive a configuration signal”⁶[sic] (Emphasis added) Simultaneously, the Examiner argues that “it’s very clear that **GPS receiver** or GLONASS receiver or satellite radio receiver **is not embedded within telematics unit** and communicating the vehicle data upload command signal between a satellite radio receiver and a telematics unit.”[sic] (Emphasis added) These two statements are contradictory. It appears the Examiner makes the latter argument in order to argue that Lange also teaches “communicating the vehicle data upload command signal between the satellite radio receiver and a telematics unit on the vehicle.” The Examiner cannot take two mutually exclusive interpretations with respect to the elements of Lange. Which interpretation does the Examiner adhere to? Does the Examiner argue that the telematics device and GPS receiver taught by Lange are integrated or separate units? If the Examiner chooses the former argument, that the units are integrated, Lange cannot be interpreted to disclose “communicating the vehicle data upload command signal between the satellite radio receiver [e.g. GPS receiver] and a telematics unit on the vehicle.” On the other hand, if the Examiner chooses the latter argument, that the units are separate, Lange cannot be viewed as “monitoring the radio broadcast channel using a satellite radio receiver for a call center initiated vehicle data upload.” Given the mutually exclusive

⁵ Lange et al., U.S. Patent No. 6,704,564, col. 3, lines 45-47.

⁶ Examiner’s Answer, September 28, 2009, page 13, lines 13-14.

nature of the Examiner's position, Lange cannot be viewed as teaching both; therefore Lange fails to anticipate each and every element of Appellant's claims.

Apart from this contradiction, the Answer contains what appears to be an improperly introduced new rejection of the claims. Throughout prosecution, the Examiner has never raised an argument under 35 U.S.C. § 103. And the sole basis for rejecting Appellant's claims, as listed in the Examiner's Answer under heading (9), is 35 U.S.C. § 102(e). However, the Examiner introduces an argument in the Answer that calls for analysis under § 103, stating that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to use Lange device to Applicant device, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art."*[sic]*⁷ Determining whether or not a claim element is obvious or not is analyzed under the scope of § 103—an entirely different section of the U.S. code than has been applied until this point. As a result, the Examiner cannot make this argument without reopening prosecution.

Accordingly, for the reasons discussed above and in the Appeal Brief, the Appellant respectfully traverses the Examiner's rejections and ask that they be overturned. The Commissioner is authorized to charge any fees, or refund any overpayments, associated with this Appeal Brief to Deposit Account No. 07-0960.

Respectfully submitted,

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⁷ Examiner's Answer, page 13, lines 18-21.